TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 201.

ARCHIE J. McLAREN, ADMINISTRATOR OF THE ESTATE OF JOHN McLAREN, DECEASED, PETITIONER,

vs.

L. G. FLEISCHER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

PETITION FOR CERTIORARI FILED MARCH 30, 1905.

CERTIORARI AND RETURN FILED JUNE 14, 1905.

(27,556)

(27,586)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 291.

ARCHIE J. McLAREN, ADMINISTRATOR OF THE ESTATE OF JOHN McLAREN, DECEASED, PETITIONER,

vs.

L. G. FLEISCHER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1920.

a In the Supreme Court of the State of California.

L. A. No. 4736.

JOHN MCLAREN, Plaintiff and Appellant,

vs.

L. G. FLEISCHER, Defendant and Respondent.

From the Superior Court of Riverside County.

Transcript on Appeal.

Henry M. Willis, San Bernardino, California; J. O. Phillips, Blythe, California, Attorneys for Plaintiff and Appellant.
Duke Stone, Los Angeles, California, Attorney for Defendant and Respondent.

Filed April 27th, 1916. B. Grant Taylor, Clerk, by Erb, Deputy Clerk.

1 In the Supreme Court of the State of California in and for the County of Riverside.

JOHN MCLAREN, Plaintiff,

vs.

L. G. FLEISCHER, Defendant.

Complaint.

John McLaren, plaintiff in the above entitled action, complaining of defendant herein, alleges:

I.

That on the 17th day of April, 1910, the southwest one-quarter of section 12, township 7 south, range 22 east, San Bernardino
2 base and meridian, was unappropriated public lands of the United States, but withdrawn from entry, selection or any form of appropriation.
That the above described lands are located in the County of Riverside, State of California.

II.

That on April 18th, 1910, the said lands were released from such withdrawal from entry to the extent of permitting the establishment of settlement rights under the provisions of the general land laws of

the United States, and in accordance therewith on said date, plaintiff herein duly entered said lands and made settlement thereon according to the provisions of the general land laws relating thereto, and erected a house thereon, and cleared and improved parts of said lands.

III.

That on May 18th, 1910, said lands were thrown open for entry, and plaintiff duly made application to enter thereon under the homestead laws of the United States, and paid the land office fees required for such entry, and received a receipt therefor from the land office.

IV.

That plaintiff continued to reside continually upon said premises until dispossessed therefrom by law, by said defendant.

3 V.

That on said May 18th, 1910, defendant herein made application for entry upon said lands, claiming prior right thereunto, and that the land department, by reason of said claim of prior right, granted to said defendant entry to said lands, and cancelled plaintiff's application.

VI.

That plaintiff is informed and believes, and upon such information and belief alleges, that his application to enter said premises was rejected through fraud and misconception or wilful disregard of the law on the part of the officers of the land department, and that the officers of the land department erred in granting entry of said premises to defendant.

VII.

That plaintiff contested the entry of said defendant to said premises, but the land department, overruling plaintiff's contests and protests, recognized the entry of said defendant, and granted to defendant, patent to said premises.

VIII.

That plaintiff is informed and believes, and upon such information alleges, that by reason of the fraud and misconception or wilful disregard of the law on the part of the officers of the land department, as aforesaid, that the issuing of the patent to said defendant was illegal and could convey no title to defendant, but that title to said lands should be declared to be vested in plaintiff.

4

Wherefore, plaintiff prays that title to said lands declared to be vested in plaintiff herein, and that the patent issued by the land de-

partment to said defendant, be declared held in trust for use and benefit of said plaintiff, and that defendant pay to said plaintiff a reasonable rental for use of said premises, and for costs of this action, and for such other and further relief as to the court may seem just and proper.

JOHN McLAREN,
Plaintiff.
J. O. PHILLIPS,
Attorney for Plaintiff.

Duly verified.
Filed Aug. 28, 1915.
[SEAL.]
A. B. PILCH,
Clerk.

Affidavit of Service by Mail.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Duke Stone, being first duly sworn, states: That on September 17th, 1915, he enclosed a true copy of the attached Demurrer in an envelope addressed to J. O. Phillips, Attorney, Blythe, Riverside County, California, and placed the necessary postage upon said envelope and sealed the same, and then mailed the said envelope addressed to said J. O. Phillips, by then and there depositing it in the United States mails at Los Angeles, California, on this September 17th, 1915.

That this affiant is the Attorney for Defendant in the cause described within the attached demurrer, and has his office at Los Angeles, California; that the residence and office of the said J. O. Phillips, who is Attorney for Plaintiff in said cause, is at said town of Blythe, Riverside County, California.

DUKE STONE.

Subscribed and sworn to before me this 17th day of September, 1915.
[SEAL.]
CHARLES F. REICHE,
Notary Public in and for Los Angeles County, California.

[Title of Court and Cause.]

Demurrer.

Comes now the defendant in the above entitled cause and demurs to the plaintiff's complaint filed therein, upon the following grounds:

I.

Said complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

II.

That paragraph Six thereof is uncertain in this: that it does not appear therefrom in what the fraud or disregard of the law on the part of the officers of the land department consisted, and it does not appear what officers the plaintiff charges with fraud and disregard of the law; and it does not appear how, or in what manner the officers of the land department erred in granting entry of said premises to the defendant.

III.

That paragraph Eight of said complaint is uncertain in this: that it does not appear therefrom what the fraud or misconception or wilful disregard of the law consisted in, nor does it appear what officers of the department were guilty of the alleged fraud; nor does it appear in what matter the issuing of the patent to the defendant was illegal; nor does it appear in what manner, or for what reason; the said patent could convey no title to the defendant.

IV.

That said paragraphs Six and Eight of the plaintiff's complaint are ambiguous for the same reasons, that they are uncertain.

7 Wherefore, defendant prays the judgment of the Court sustaining this demurrer.

DUKE STONE,
Attorney for Defendant

Filed Sept. 18, 1915. [Seal.] A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.

Minute Order.

Oct. 11, 1915.

Demurrer sustained 10 days. (Minute book 32 page 6.)

[Title of Court and Cause.]

First Amended Complaint.

John McLaren, plaintiff in the above entitled action, complaining of defendant herein, alleges:

I.

That on or about the 17th day of April, 1910, the southeast one-quarter (S. E. ¼) of section twelve (12), township seven (7) south, range twenty-two (22) east, S. B. M., was unappropriated public land of the United States, but withdrawn from entry, selection or

any form of appropriation by order of the land department
8 of the United States, first, by withdrawal dated July 17, 1902.
and by a second withdrawal dated September 12, 1903, which said withdrawal continued in force and effect up to the 18th day of April, 1910.

II.

That the said lands above described are located in the County of Riverside, State of California.

III.

That on April 18, 1910, the said lands were released from such withdrawal from entry as hereinbefore mentioned to the extent of permitting the establishment of settlement rights under the provisions of the General Land Laws of the United States, and in accordance therewith, on said date, plaintiff herein duly entered said lands and made settlement thereon according to the provisions of the General Land Laws of the United States relating thereto, and erected a house thereon and cleared and improved parts of said lands.

IV.

That on May 18, 1910, said lands were thrown open for entry under the General Land Laws of the United States, and plaintiff duly made application to enter thereon and paid the land office fee as required by law for such entry, and received a receipt therefor from
the land office officials having jurisdiction of the disposition
9 of the said lands, which office is located in Los Angeles.

V.

That the plaintiff continued to reside continuously upon said premises until dispossessed therefrom by law, through the instigation of said defendant.

VI.

That on or about the 14th day of July, 1908, and while the said lands were withdrawn from entry, selection or any form of appropriation as designated by the withdrawal order of September 12, 1903, as hereinbefore mentioned, said defendant herein contested a homestead entry which had been filed by CharlesW. Rider on the premises hereinbefore described, which contest was allowed by the land office officials having jurisdiction thereof, and a preference right granted to said defendant by reason of said contest.

VII.

That on or about the said date of April 18, 1910, defendant herein made application for homestead entry for said premises and

claimed a preference right thereto by reason of the aforesaid contest, and said entry was accepted by the land officials and patent granted to said defendant for said premises on or about January 15, 1915.

10

VIII.

That plaintiff's application to make entry upon said premises was rejected by the United States Land Officials without a hearing, said rejection being made for the reason that the registrar and receiver having jurisdiction thereof decided that said defendant was entitled to entry by reason of the contest initiated by him as hereinbefore stated and had a preference right thereto over plaintiff by reason of said contest.

IX.

That plaintiff appealed from said decision of the registrar and receiver to the land commissioner and to the secretary of the interior, but that the appeal was denied and the findings of the registrar and receiver were confirmed.

X.

That plaintiff is informed and believes, and upon such information and belief alleges, that the registrar and receiver, and others to whom the appeal was carried, rejected plaintiff's application for entry on said premises through misconception or wilful disregard of the United States Land Laws relating thereto, for the following reasons, to-wit:

First. That said officials misapplied or disregarded the United States Land Laws and regulations, permitting defendant to contest the said former entry of Charles W. Rider while the lands
11 were withdrawn by the various withdrawal orders hereinbefore mentioned;

Second. That the said Land Office Officials misapplied or disregarded the law in allowing, or keeping alive, the preference right granted to said defendant by his successful contest beyond the period and time specified and designated in the United States Land Laws relating thereto;

Third. That the said registrar and Receiver and other officials to whom the matter was appealed misapplied or wilfully disregarded the general land laws relating to homestead entries on public lands of the United States in granting to said defendant the entry to said lands and the rejection of plaintiff's entry by reason of said preference right.

XI.

That plaintiff is informed and believes, and upon such information and belief alleges, that by reason of the misconception, or dis-

regard, of the United States Land Laws on the part of the officials of the land department as aforesaid, that the issuing of the patent to said defendant was illegal and could convey no title to defendant, and that by reason of plaintiff's application to make entry upon the aforesaid lands, which was rejected as aforesaid by the United States Land Office Officials, plaintiff herein is entitled to the possession of said premises and that same should be declared to be vested in plaintiff.

12 Wherefore, plaintiff prays that title to said lands be declared to be vested in said John McLaren, plaintiff herein, and that the patent issued by said land department to said defendant be declared held in trust for the use and benefit of said plaintiff, and that defendant pay to said plaintiff a reasonable rental for the use of said premises, and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

JOHN McLAREN,
Plaintiff.
J. O. PHILLIPS,
Attorney for Plaintiff.

Duly verified.

Filed Nov. 18, 1915. A. B. Pilch, Clerk, by E. B. Harris, Deputy.

[Title of Court and Cause.]

Demurrer to First Amended Complaint.

Comes now the defendant in the above entitled cause and demurs to plaintiff's complaint therein, upon the following ground:
13 That said complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

DUKE STONE,
Attorney for Defendant.

Affidavit of Service by Mail.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Duke Stone, Esq., being first duly sworn, states: that on November 22nd, 1915, he enclosed a true copy of the attached demurrer in an envelope addressed to Mr. J. O. Phillips, Attorney-at-Law, Blythe, Riverside County, California, and placed the necessary postage upon said envelope and sealed the same, and then mailed the said enevlope addressed to said J. O. Phillips, by then and there depositing it in the United States mails at Los Angeles, California, on this 22nd day of November 1915.

That this affiant is the attorney for the defendant in the cause described within the attached demurrer, and has his office at Los Angeles, California; that the residence and office of the said J. O. Phillips, who is attorney for plaintiff in said cause, is at said town of Blythe, Riverside County, California.

DUKE STONE.

14 Subscribed and sworn to before me this 22nd day of November, 1915.

[SEAL.]

H. E. WASSELL,
Notary Public in and for Los Angeles County, California.

Filed Nov. 23, 1915. A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.

Minute Order.

December 13, 1915.

Minute Book 32, page 213. Demurrer Sustained, 15 days to amend.

[SEAL.]

A. B. PILCH,
Clerk,
By O. A. LOWENTROUT,
Deputy.

[Title of Cause.]

Second Amended Complaint.

Comes now plaintiff in the above entitled action, in this second amended complaint, and complaining of the defendant herein alleges:

15 I.

That the said plaintiff, is, and at all times mentioned herein, has been a citizen of the United States, over the age of twenty-one years, and is, now, and has been at all times mentioned herein, qualified under the laws of the United States, to make and perfect a homestead entry upon public lands of the United States, under the land laws of the United States.

II.

That on February 9th, 1903, and for a long time prior thereto, the S. E.¼ of Sec. 12, T. 7, S., R. 22 E., S. B. M., situate in the County of Riverside, State of California, was among other lands in the same neighborhood, open to entry under the land laws of the United States.

III.

That on February 9th, 1903, one Charles W. Rider, duly made his homestead entry in the United States Land Office, at Los Angeles, California, on said S. E¼ of said Sec. 12, under the homestead laws of the United States; said Land Office then and at all times hereinafter mentioned, being the United States Land Office having jurisdiction over said lands as provided by law.

IV.

That on or about the 8th day of September, 1903, the said lands, together with other lands in the neighborhood thereof, were
16 duly withdrawn, by order of the Land Department of the United States, under and by virtue of an act of Congress approved June 17th, 1902, and known as and called the "Reclamation Act," from all forms of entry, said withdrawal being what is commonly known as and called, and designated by the Land Department of the United States as, a "First Form Withdrawal"; and that said lands remained so withdrawn under said "First Form Withdrawal," until restored as hereinafter mentioned. That lands so withdrawn under said "First Form Withdrawal" under said act of June 17th, 1902, cannot, under the terms and provisions of said Act, be entered, selected or located in any manner as long as the said lands so remain withdrawn.

V.

That on February 18th, 1908, and while said lands were so withdrawn, one Lawrence G. Fleischer, defendant herein, filed a contest against the said homestead entry of the said Charles W. Rider, on the said lands hereinbefore described, under and by virtue of the laws of the United States, and the rules and regulations of the Land Department, and subject to the act of Congress of May 14th, 1880, which said contest was recognized by the Land Department of the United States; that the register and receiver of the Local Land Office of the United States, at Los Angeles, California, entertained said contest, and sustained the same in
17 favor of said defendant, and made its report in due form to the Commissioner of the General Land Office, recommending a cancellation of said entry; that on January 28th, 1909, the then Commissioner of the General Land Office sustained the decision of the register and receiver of the said Local Land Office, and canceled the said homestead entry of the said Charles W. Rider, and directed the said register and receiver to advise all parties in interest; that thereafter to-wit, on February 11th, 1909, the register and receiver of the Local Land Office, at Los Angeles, California, duly notified said defendant, Lawrence G. Fleischer, of the cancellation of said entry; and at the same time notified him that he had been awarded a preference right to enter upon the said

S. E.¼ of Sec. 12, T. 7 S., R. 22 E., S. B. M., within thirty days after the said land had been restored to public entry.

VI.

That thereafter, to-wit, by an order duly made by the Secretary of the Interior of the United States, to-wit on January 10th, 1910, said lands together with other lands in the neighborhood thereof, were restored to public settlement on April 18, 1910, and to public entry on May 18, 1910.

VII.

That on April 18, 1910, plaintiff herein, being then and there duly qualified under the land laws of the United States
18 to make settlement and to make a homestead entry on open public lands of the United States, made actual settlement on the said S. E.¼ of Sec. 12, T. 7 S., R. 22 E., S. B. M., in Riverside County, California, said lands being a part of the lands so restored as hereinbefore alleged, with the intention of claiming the same under the homestead laws of the United States; that plaintiff thereby acquired a settler's right under and by virtue of the Act of Congress of May 14, 1880, relating to a settler's right; that he remained thereon as such settler, and made his residence thereon, under and by virtue of the laws of the United States, and on May 18, 1910, duly made entry thereon, by filing his homestead application, as such settler, in the United States Land Office, at Los Angeles, California, and paying the fees required by law, and in all respects complied with the laws and rules and regulations of the land department, relating to homestead entries, and continued to reside thereon with his family, and make improvements thereon, until dispossessed by said defendant, by a judgment duly made and given in the Superior Court of the State of California in and for Riverside County and entered April 24, 1915

VIII.

That on May 18, 1910, but subsequent to the entry of plaintiff, said defendant Lawrence G. Fleischer made his homestead entry on the same land in the United States Land Office, at Los Angeles, California, claiming a preference right so to do, under and
19 by virtue of said alleged preference right theretofore awarded him by the register and receiver of the Local Land Office of the United States, at Los Angeles, upon the successful termination of said contest against the entry of said Charles W. Rider.

IX.

That on May 18, 1910, all of said applications to enter, and all said entries, were duly suspended by the land department of the United States, pending the settlement of a contest between the State

of California and the United States of America, as to the character and disposition of said land; that on May 22, 1912 by an order duly made and entered said lands were again restored to public entry, subject to the entries already made thereon.

X.

That thereupon, on June 3, 1912, without hearing and without evidence, and arbitrarily, the register and receiver of the Land Office, at Los Angeles, California, rejected and cancelled the homestead entry of plaintiff, and allowed the homestead entry of defendant, on the sole ground that the said defendant had acquired a preference right under the laws of the United States, by reason of the successful termination of the contest theretofore filed and concluded by him as hereinbefore alleged.

20 XI.

That thereafter plaintiff adopted, used, and exhausted all remedies provided by the laws of the United States, and the rules and regulations of the Land Department of the United States, concerning appeals, and the exercise of supervisory authority, in order to secure his said right as a settler, and as a homestead entryman on said lands, under and by virtue of said settlement and homestead application, but that the officers of the Land Department of the United States refused, and still refuse, to allow him the right he acquired under and by virtue of his settlement on said land as hereinbefore alleged, and his entry thereon under the homestead laws of the United States as hereinbefore alleged; that plaintiff was, at the time of said application, and ever since has been, and still is, duly qualified to make and perfect such homestead entry, and to make such settlement and perfect the right vested in him thereby granted by law; that by reason of, and through the action and decisions of the officers of the Land Department of the United States, the said entry of plaintiff has been cancelled and denied, and the said entry of the said defendant has been allowed and approved, and a patent was, on January 15, 1915, issued by the President of the United States to the said Lawrence G. Fleischer for the said lands, which said patent was recorded in the office of the County Recorder of Riverside County on April 27, 1915, in Book 6 of Patents at page 375, all as a result of the said action and decisions of the officers of the Land Department of the United
21 States, and not otherwise.

XII.

And plaintiff further alleges that he is informed and believes and upon such information and belief alleges that the officers of the Land Department of the United States, to-wit, the then register and receiver of the Local Land Office, at Los Angeles, California, who received, recognized, and entertained the contest of the said defendant,

Lawrence G. Fleischer, against the former homestead entry of the said Charles W. Rider, as aforesaid, and who, after hearing said contest, recommended to the Commissioner of the General Land Office, that the said entry be cancelled; and that the then Commissioner of the General Land Office who considered said contest, and the recommendation of the register and receiver, aforesaid, and cancelled said entry of the Charles W. Rider as aforesaid, and directed said register and receiver of said Local United States Land Office at Los Angeles, California, to advise all parties in interest in said contest, acted wrongfully and contrary to the law, by and through a misconstruction and mistake in the application of the laws of the United States, relative to contests against entries on public lands, and the laws of the United States, relative to the acquiring of a preference right by reason of such contest, particularly contrary to the express terms of the Act of Congress of May 14, 1880, wherein and whereby a preference
22 right is declared and created under and by virtue of and subject to the terms of said Act.

XIII.

That the said then register and receiver of the Local United States Land Office at Los Angeles, California, acted beyond their jurisdiction and contrary to law, and arbitrarily, and without notice or hearing or trial, in cancelling the homestead application of plaintiff herein, as hereinbefore described and set forth, due to a misconstruction and misapplication and misconception of the law relating to the rights vested in this plaintiff by reason of his settlement on the lands described in said application, as hereinbefore alleged, and due to a misapplication and misconstruction and misconception of the law of the United States, relating to the preference right created and designated in said Act of Congress, of May 14, 1880; that for the same reason the then Commissioner of the General Land Office, and the then Secretary of the Interior of the United States, in considering and approving and affirming the action and decision of the said register and receiver, and of each other, misapplied, misconstrued and misconceived the laws of the United States, relating to the right acquired by said plaintiff in making his settlement and entry as aforesaid, and in denying the same, and cancelling the same, by reason of the alleged preference right of the said defendant, awarded him as aforesaid by said officers of the General Land Office,
23 by reason of the successful termination of said contest against the homestead entry of the said Charles W. Rider as aforesaid.

XIV.

That the register and receiver of the Local Land Office at Los Angeles, and the Commissioner of the General Land Office, and the Secretary of the Interior, in deciding against the right claimed by said plaintiff, under and by virtue of his settlement and homestead entry, as hereinbefore alleged, and in favor of the said defendant Lawrence G. Fleischer, by reason of the alleged preference right

awarded him, and recognized by the officers of the General Land Office of the United States, acted contrary to law, under and by reason of a misapprehension, a misconstruction, a misconception, and a disregard of the law of the United States relating to contests and homestead entries and settlers' rights and preference rights.

XV.

That all of the officers of the Land Department as herein before described, in denying plaintiff's right as a settler on the lands hereinbefore described, and the right acquired by him under the land laws of the United States, by reason of said settlement on April 18, 1910, and the filing of his application for homestead on May 18, 1910, and in granting the subsequent application to homestead made by the said defendant, Lawrence G. Fleischer, on the ground that he
24 had theretofore acquired a preference right under the laws of the United States, by reason of the successful termination of his contest by the prior homestead entry of the said Charles W. Rider, was without the jurisdiction of the said officer of the said Land Department, and was contrary to law, due to a misconstruction, misapplication and misconception of the law on the subject.

XVI.

That by reason of such misconstruction, misapplication and misconception of said laws as aforesaid, this plaintiff has been deprived of, and prevented from, attaining title to the said lands embraced within his said homestead application, and that the defendant, Lawrence G. Fleischer, has been granted the title to the same by a patent from the President of the United States, upon the action and decision of the said officers of the Land Department as afore-said, and not otherwise.

XVII.

That during all the times herein mentioned, and since April 18, 1910, plaintiff has been ready, able and willing and qualified, under the laws of the United States, to make and complete and perfect the homestead entry made by him as aforesaid, and that he had in fact complied with all the laws, and requirements of the laws of the United States, and all the rules and regulations of the Land Department of the United States, relating to homesteads, except as
25 prevented or prohibited by the officers of said Land Department, until he was ejected from said premises by judgment of the Superior Court of the State of California in and for the County of Riverside, entered April 24, 1915, as hereinbefore alleged.

Wherefore, plaintiff prays that a decree be entered herein declaring that the defendant holds the title to the lands hereinbefore described in trust for this plaintiff, and that the defendant be required to make a good and sufficient conveyance of said lands, and the title thereto to this plaintiff; and for the reasonable value of the use of said prem-

ises since April 24, 1915, and for costs of this action, and for such other and further relief that may, to the Court, seem meet and equitable.

HENRY M. WILLIS AND J. O. PHILLIPS,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Henry M. Willis being first duly sworn, says that he is attorney for the plaintiff in the above entitled action; and has his office in San Bernardino, in the County of San Bernardino; that
26 plaintiff is absent from the County of San Bernardino, and for that reason his attorney makes this verification; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and that as to those matters he believes it to be true.

HENRY M. WILLIS.

Subscribed and sworn to before me this 22nd day of December, 1915.

[SEAL.] MAE DRYSDALE,
Notary Public in and for the County of San Bernardino, State of California.

Filed Dec. 23, 1915. A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.

[Title of Court and Cause.]

Demurrer to Second Amended Complaint.

Comes now the defendant and demurs to the plaintiff's second amended complaint in the above entitled cause, upon the following grounds:

27 That said complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

Wherefore, defendant prays the judgment of the court.

DUKE STONE,
Attorney for Defendant.

Filed Dec. 28, 1915. A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.

Minute Order.

January 14, 1916.

Minute Book 32, page 316.
Demurrer sustained with leave to plaintiff to amend his complaint within 10 days if he so desires.

[SEAL.]

A. B. PILCH,
Clerk,
By O. A. LOWENTROUT,
Deputy.

[Title of Court and Cause.]

Judgment.

On January 10th, 1916, came on to be heard defendant's demurrer to plaintiff's complaint in the above entitled cause, and the
28 plaintiff appearing by his attorney, Henry M. Willis, Esq., and the defendant appearing by his attorney, Duke Stone, Esq., and the Court after having heard the argument on behalf of plaintiff and defendant, and being well and sufficiently advised in the premises, finds that the defendant's demurrer should be, and the same was sustained on January 14th, 1916, and the plaintiff given ten days in which to file an amended complaint, and it appearing to the Court that on January 18th, 1916, that said attorney for plaintiff received and acknowledged notice of the action of the Court in sustaining defendant's demurrer, and that more than ten days have elapsed since said attorney for plaintiff received notice of the sustaining of said demurrer, and the plaintiff having failed to amend his complaint within the time provided by order of the Court, and elected to stand upon his said complaint.

It is ordered, adjudged and decreed by the Court, that the plaintiff's complaint be, and the same is hereby dismissed, and that judgment be entered in favor of the defendant, and that the defendant have and recover of and from the plaintiff his costs herein, taxed at $3.50.

F. E. DENSMORE,
Judge.

Dated this 4th day of February, 1916.

29 Filed Feb. 4, 1916. A. B. Pilch, Clerk, by Lyla Palmer, Deputy.

Recorded in Book 20 of Judgments at page 32 the 4th day of Feb. 1916.

A. B. PILCH,
Clerk,
By LYLA PALMER,
Deputy.

[Title of Court and Cause.]

Certificate to Judgment Roll.

I, A. B. Pilch, County Clerk of the County of Riverside, State of California, and ex-officio Clerk of the Superior Court, in and for said County, do hereby certify the foregoing to be a true copy of the Judgment entered in the above-entitled action, and recorded in Judgment Book 20 of said Court, at page 32. And I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness, my hand and the seal of said Superior Court, this 4th day of February, A. D., 1916.

[SEAL.]

A. B. PILCH,
Clerk,
By O. A. LOWENTROUT,
Deputy.

30 [Title of Court and Cause.]

Notice of Appeal.

To Duke Stone, Esq., Attorney for Defendant, and to Lawrence G. Fleischer, defendant, and to A. B. Pilch, Clerk of the aforesaid Court:

Please take notice, that the plaintiff above named hereby appeals to the Supreme Court of the State of California from the whole of that certain judgment made and entered in this action by said Court on the 4th day of February, 1916, wherein it is adjudged in said judgment that said plaintiff take nothing by his said action.

Dated this 18th day of March, 1916.

HENRY M. WILLIS AND
J. O. PHILLIPS,
Attorneys for Plaintiff.

Filed Mar. 20, 1916. A. B. Pilch, Clerk, by E. B. Harris, Deputy.

31 [Title of Court and Cause.]

Proof of Service by Mail.

STATE OF CALIFORNIA,
County of San Bernardino, ss:

Henry M. Willis being duly sworn deposes and says: that he is an attorney at law and is one of the attorneys for the above named plaintiff in the above entitled cause, and that he resides at Redlands, and has his office in San Bernardino, in the County of San Bernardino, California: That Duke Stone is the attorney of record for the above named defendant in said cause, and that the said Duke Stone resides

in the County of Los Angeles, and has his office at Rooms 434-436-438 Merchants National Bank Building, in the city of Los Angeles, California: That in each of said two places there is a United States post-office, and between said two places there is a regular daily communication by mail: That on the 22nd day of December, 1915, deponent served a true copy of the second amended complaint herein on the said Duke Stone, the said attorney of said defendant, by *depositing* such copy, on said date in the post-office at the city of San Bernardino aforesaid, properly enclosed in an envelope, addressed to said Duke Stone attorney at law at the address above given at Los Angeles, California, and prepaying the postage thereon.

HENRY M. WILLIS.

32 Subscribed and sworn to before me, this 22nd day of December, 1915.

[SEAL.] MAE DRYSDALE,
Notary Public in and for the County of San Bernardino, State of California.

Filed Dec. 23, 1915. A. B. Pilch, Clerk, by A. O. Lowentrout, Deputy.

[Title of Court and Cause.]

Clerk's Certificate.

STATE OF CALIFORNIA,
County of Riverside, ss:

I, A. B. Pilch, County Clerk and Ex-Officio Clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action now on file in my office, and that the same contains full, true and correct copies of the Judgment Roll, Notice of Appeal from the Judgment, together with the endorsements on said papers, and documents, as the same now appear on file in my office.

I further certify that the Undertaking on Appeal from the Judgment, in due form, has been properly filed in my office,
33 within the time prescribed by law.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Superior Court this 24th day of April, 1916.

[SEAL.] A. B. PILCH,
Clerk.

[U. S. Revenue Stamp.]

34 By the Court:

It is ordered that the cases hereinafter named be and the same are hereby assigned to Department One and in accord with the stipulations on file that the same be and they hereby are submitted on the briefs on file.

L. A., No. 4736.

McLAREN

v.

FLEISCHER.

Dated January 20, 1919.

Minutes of the Supreme Court in Bank, January 20, 1919.

L. A., 4736.

McLAREN

v.

FLEISCHER.

By the Court:

The proper substitution having been made in the Superior Court and a certified copy of the order therein having been presented to and filed in this court, it is ordered that Archie J. McLaren, administrator of the Estate of John McLaren, deceased, be and he is hereby substituted as plaintiff and appellant in the above entitled matter in the place and stead of said John McLaren, deceased.

Dated February 13, 1919.

Shaw, P. J.

Minutes of Department One, February 13, 1919.

L. A., 4736.

McLAREN

v.

FLEISCHER.

By the Court:

The order heretofore made submitting the above entitled causes is vacated, for the purpose of giving leave to file additional briefs.

It is ordered that the appellant in each case be allowed thirty days within which to file briefs in reply to this point. Leonard, Surr & Hellyer are allowed fifteen days from the service of such brief within which to reply to the same and thereupon the causes are to stand submitted.

Minutes of Department One, June 17, 1919.

L. A., 4736.

McLAREN

v.

FLEISCHER.

By the Court:

All of the briefs having been filed pursuant to previous order cause submitted.
Dated July 22, 1919.

Shaw, P. J.

Minutes of Department One, July 22, 1919.

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L. A., 4736.

McLAREN

v.

FLEISCHER.

The judgment is affirmed.
Lawlor, J.

We concur:
Shaw, J. Olney, J.

Minutes of Department One, December 1, 1919.

L. A., 4736.

McLAREN

v.

FLEISCHER.

By the Court:

Rehearing denied December 29, 1919. (All concur.)
Minutes of the Supreme Court in Bank, December 29, 1919.

36 October.

Filed Dec. 1, 1919. B. Grant Taylor, Clerk, by Erb, Deputy.

Department One.

L. A., No. 4736.

JOHN MCLAREN, Plaintiff and Appellant,

v.

L. G. FLEISCHER, Defendant and Respondent.

This appeal was taken from a judgment of the Superior Court of Riverside County dismissing plaintiff's complaint after a general demurrer was sustained and the plaintiff refused to amend.

The action was brought by the plaintiff against the defendant to procure a decree in equity declaring that the defendant holds the title to a certain quarter section of land in trust for the plaintiff, requiring the defendant to convey title to the plaintiff, and for the value of the use of the land for the period set forth in the complaint. The prayer of the complaint is based on allegations to the effect that the plaintiff was wrongfully, through mistake of law, deprived of such title, or the acquiring of such title, and the defendant was wrongfully, and by mistake of law, granted such title by the land department of the United States. There is no claim of fraud, either actual or constructive.

37 Before proceeding to a consideration of the points involved in this appeal it is proper to point out that the rule is well settled that the courts cannot exercise direct jurisdiction over the rulings of the officers of the land department of the United States, nor are the courts authorized to reverse or correct such rulings in collateral proceedings between private parties, but that the decisions of the land department are subject to review by the courts only where it appears that the land department has committed an error of law, and denied to the parties the rights to which they are entitled under the constitution and the laws of the United States. Under such circumstances the courts can in a proper proceeding, interfere and refuse to give effect to the action of the land department. In Quimby v. Conlan, (104 U. S. 420) it was said: "It would lead to endless litigation, and be fruitful of evil if a supervisory power were vested in the courts over the actions of the numerous officers of the land department, on mere questions of fact presented for their determination. It is only when those officers have misconstrued the law applicable to the case, as established before the department, and thus have denied to parties rights, which upon a correct construction, would have been conceded to them, or when misrepresentations and fraud have been practiced, necessarily affecting their judgment, that the courts can, in a proper pro-

ceeding, interfere and refuse to give effect to their action. On this subject we have repeatedly and with emphasis expressed our opinion, and the matter should be deemed settled." (Citing cases.) In Gage v. Gunther, (136 Cal. 338) this court declared: "If, however, in making such determination of fact, that tribunal (the land department of the United States) has disregarded the law applicable thereto, or has erred in its construction of the law or by reason of mistake has issued to one person a patent for the land which upon undisputed facts should have been issued to another who has contested his claim and has shown himself entitled to the patent, the person in whose favor the patent was issued will be held to
38 hold the land for the benefit of the one to whom it should have issued. Proceedings for this purpose are, however, to be taken in a court of equity, and are to be governed by the rules of equity procedure."

The following facts are taken from the complaint and must stand as true: On February 9, 1903, the southeast quarter of section 12, T. 7s., R. 22E., S. B. M., in the Palo Verde Valley, Riverside County, was open to public entry under the land laws of the United States, and on that day one Charles W. Rider made his homestead entry on said land by filing his application in the land office at Los Angeles. This quarter section, along with other lands, was withdrawn from all forms of entry on September 8, 1903, by order of the land department, under and by virtue of the Act of Congress, approved June 17, 1902, and known as the Reclamation Act (32 Stats. 388), such withdrawal being what is commonly known as "first form withdrawals," during the existence of which no lands embraced therein can be entered, selected or located in any manner.

On February 18, 1908, while these lands were still withdrawn from public entry, L. C. Fleischer, defendant and respondent herein, filed a contest of the Rider entry before the register and received of the local land office at Los Angeles, who sustained the contest and recommended to the Commissioner of the General Land Office that the Rider entry be cancelled. The Commissioner approved the recommendation and on January 26, 1909, cancelled the entry, and directed the register and receiver to advise all parties in interest. The defendant was notified by the register and receiver, of the cancellation of the entry, on February 11, 1909, and at the same time was notified by the register and receiver that he had been awarded a preference right to enter upon the said quarter section within thirty days after the said land had been restored to public entry. An order of the Secretary of the Interior, dated January 10, 1910, restored the quarter section, along with
39 other lands, to public settlement on April 18, 1910, and to public entry on May 18, 1910.

On the day that the land was restored to public settlement, April 18, 1910, the plaintiff, "being in all ways qualified under the laws to do so," made actual settlement on the quarter section hereinbefore mentioned, with the intention of claiming the land under the homestead laws of the United States. And on May 18, 1910, he

filed his homestead application, as such settler, in the local land office at Los Angeles, paid the fees required by law, continued thereafter to reside upon and improve the land, and "in fact complied with all the laws, and requirements of the laws of the United States, and all the rules and regulations of the Land Department of the United States, relating to homesteads, except as prevented or prohibited by the officers of said Land Department, until he was ejected from said premises by judgment of the Superior Court of the State of California in and for the County of Riverside, entered April 24, 1915."

The defendant, on May 18, 1910, made his application for entry on the same quarter section, but subsequent to the application of the plaintiff, claiming a preference right to make such entry, under and by virtue of the prefence right awarded him by the provisions of the act of May 14, 1880, hereinafter set forth. On the same day all the entries on this quarter section and certain other land were suspended, pending the settlement of a contest between the State of California and the United States as to the character and disposition of these lands. On May 22, 1912, the lands were again restored to public entry, subject to the applications already made. Some time later, namely, on June 3, 1912, the register and receiver of the local land office at Los Angeles rejected the application of the plaintiff and allowed that of the defendant, "on the sole ground that the said defendant had acquired a preference right by reason of the successful termination" of his contest of the Rider entry. Plaintiff appealed, but the Commissioner of the Land Office affirmed the decision of the register and receiver. In pursuance of this decision a patent for the said quarter section was issued to the defendant on January 15, 1915.

From the date of his settlement on the land April 18, 1910, until he was ejected under the judgment of the superior court above mentioned, the plaintiff lived on the land with his family and the complaint alleges that he has been always qualified, under the laws of the United States, to make the proposed homestead entry and has complied with all the requirements of said laws and all the rules and regulations of the Land Department of the United States relating to homesteads, except as prevented or prohibited by the officers of the Land Department.

The point is raised in the brief of amici curiæ that the "plaintiff has not connected himself with the government or shown that he is vested with the equitable title so as to enable him to maintain this action." There is clearly no merit in this contention. Section 2290 of the Revised Statutes of the United States provides:

"That any person applying to enter land shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person. * * * except himself, or herself, and upon filing such affidavit with the register or receiver on payment of five dollars when the entry is of

not more than eighty acres, and on payment of ten dollars when the entry if for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified." What constitutes an entry was laid down in Hastings, etc. Co. v. Whitney, 132 U. S. 357, 33 L. ed. 363, Mr. Justice Lamar writing the opinion:

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"Under the homestead law three things are needed to be done in order to constitute an entry on public lands: First, the applicant must make an affidavit setting forth the facts which entitle him to make such an entry; second, he must make a formal application; and, third, he must make payment of the money required. When these three requisites are complied with, and the certificate of entry is executed and delivered to him, the entry is made—the land is entered." (See also, Whittaker v. Pendola, 78 Cal. 296; Northern Pac. R. Co. v. Nelson, 22 Wash. 521.)

The case of Chapman v. Quinn (56 Cal. 266) is relied on to support the contention that the plaintiff has not connected himself with the government title sufficiently to entitle him to maintain the present action to declare the defendant trustee of the title for his benefit. This decision, however, is not in point. In that case the court was considering the preemption statute, which provided that before an entry could be made under that section is must be established to the satisfaction of the register and receiver that the applicant had settled upon and improved the land he sought to enter (p. 274). Section 2290, it will be observed, does not require the applicant to do anything more than the plaintiff herein had done in order to enter the land; that is to say, to make, subscribe and file in the proper land office the affidavit required by that section, and to pay the amount of money necessary to enter the quantity of land he applies for. When this is done his right is complete. The statement in the opinion of Mr. Justice Lamar which seems to imply that the entry is not complete until the officials execute a certificate of entry to him is not warranted by the statute. The applicant has put himself in privity with the government when he has done all he could do in the matter.

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He is then in a position to compel the officials to do their duty toward him and to assert his right against others claiming a similar right from the government. The plaintiff in this case had complied in all respects with the law and stood in the relation of an entryman upon a homestead claim. In Chapman v. Quinn, under a lawful rule of the Land Department, Quinn had not been allowed to file any application or make any proof. The two cases are clearly distinct and different.

The only question presented and decided in the Land Department was whether the plaintiff or the defendant had the better or prior right to enter the land. This question was decided in favor of the defendant on the single ground that he had been granted a preference right. The sole question, therefore, which is presented for decision here is whether the officers of the Land Department made a mistake of law in granting the defendant a preference right, in the

recognition of which it became necessary to cancel plaintiff's entry.

A preference right is authorized by the Act of Congress of May 14, 1880, (21 Stats. 140) which reads in part as follows:

"Sec. 2. In all cases where any person has contested, paid the land office fees, and procured the cancellation of any pre-emption, homestead, or timber culture entry, he shall be notified by the register and receiver of the land office of the district in which such land is situated of such cancellation and shall be allowed thirty days from date of such notice to enter said lands."

At the time this act of 1880 was passed the Reclamation Act had not been enacted. It is obvious that the act of 1880 is based on the assumption that when the entry of one claimant was canceled the successful party could immediately enter the land. It contemplates land which would remain subject to entry during the contest.
43 The provision that the successful claimant should be allowed thirty days within which to enter the land after he was notified by the land office of the cancellation of his adversary's entry, was intended and supposed to give him thirty days, during the whole of which time he could complete his own entry. It cannot be conceived that the Congress intended to start the time of his preference running before it was possible for him to exercise his right thereto. The law gives the preferred right absolutely and the provisions regarding the giving of notice of necessity imply that the land shall be subject to entry at the time the notice is received and that it must be subject to entry before notice can become effective to start the time running. The notice which the act contemplates shall be given must be understood to be a notice which would give effect to the right intended to be preserved, and not a notice that would defeat it. In this case the land was not subject to entry at the time the contest was terminated and Rider's entry canceled. The register and receiver apparently so interpreted the effect of the act of 1880 when they sent the notice, for it informed the defendant that his preference right to enter the land would continue for thirty days after the land was restored to entry. The notice they gave must be construed as a notice to take effect on the restoration to entry of lands involved and not before. If this construction is not given, the object of the act of 1880 would be utterly defeated in all cases such as the one at bar. The land department itself has so understood and construed the act. Section 10 of the Reclamation Act gives to the secretary of the interior, authority to make such rules and regulations as may be necessary and proper to carry its provisions into effect. These provisions include his order restoring the land to entry after its
44 withdrawal. As evidence of the departmental construction of the act of 1880, certain regulations were promulgated on June 6, 1905, of which number 7 provides that "any contestant who gains a preferred right to enter any such lands may exercise that right at any time within thirty days from notice that the lands involved have been released from such withdrawal and made subject to entry." The land department with regard to lands so withdrawn, has consistently held to the proposition that the preference right to enter given

to the successful contestant by the act of 1880 does not begin to run until the land is again restored to entry, regardless of the time when he receives the official notice of cancellation of his adversary's entry. The construction placed upon an act of Congress by the land department, with respect to the disposition of public lands, and its practical application thereof, is always given great weight by the courts in construing the law and is followed if it is at all reasonable. We are satisfied that the land department correctly construed the act in the present case in its decision that the time within which the defendant could exercise his preference right, after the cancellation of the other entry, did not begin to run against him until the time of the restoration of the land to public entry. This occurred on May 18, 1910. This was in effect decided by the land department in the case of Fairchild v. Eby, 37 L. D. 362. Referring to the department regulations aforesaid and to the preference right allowed by the act of 1880 the secretary of the interior there said: "It was thus contemplated that the preference right allowed by the sixth section (of the regulations) should remain suspended if the land was not subject to entry at the date of cancellation, but that the preference right so acquired might be exercised whenever the land was restored." The sixth section refers to the preference right accruing under the act of 1880 aforesaid. To the same effect see Wright v. Fran-
45 cis, 36 L. D. 499; Beach v. Hansen, 40 L. D. 607; Wells v. Bodkin, 22 L. D. 340; Edwards v. Bodkin, 42 L. D. 172.

Appellant relies upon Edwards v. Bodkin, 249 Fed. 562, in support of his claim that the preference right was awarded to the respondent through a mistake of law. The decision there was not to the effect that the contestant was by mistake of law given the preference right. It was there held that the commissioner of the general land office had mistaken the law in declaring that the settler had abandoned his homestead claim. In discussing the question the court remarked that the Reclamation Act did not confer authority "upon the secretary of the interior to so extend the limitation of the act of May 14, 1880." This is the statement relied upon. It is unnecessary to determine in this case whether the reclamation act gave or could give legislative authority to the secretary of the interior or not. It is enough for the purpose of this case to say that he may construe the act of 1880 in connection with the Reclamation Act, and if the construction he adopts is reasonable it will be upheld and followed by the courts.

For these reasons we are of the opinion that the preferred right of the defendant to complete his entry and thereupon occupy the land for the purpose of acquiring a homestead patent did not begin to run until the time of the restoration of the land to entry, when for the first time it became possible for him to exercise the right given by the statute. The demurrer was properly sustained.

The judgment is affirmed.

LAWLOR, *J.*

We Concur:
SHAW, *J.*
OLNEY, *J.*

46 In the Supreme Court of the State of California.

L. A., No. 4736.

JOHN MCLAREN, Plaintiff and Appellant,
vs.
L. G. FLEISCHER, Defendant and Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the Minute Orders of the Supreme Court in Bank and in Department One, made and entered on the dates therein specified; and a copy of the opinion of Department One of said Court, in the above entitled action.

And I further certify that the remittitur in the above entitled action was issued and sent to the County Clerk of Riverside County California, on January 2, 1920, as shown by the records of my office.

Witness my hand and the seal of the Court, this 2nd day of April A. D. 1920.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk.
By M. C. VAN ALLEN,
Deputy Clerk, Los Angeles Office.

47 I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of Transcript on Appeal in La 4736, John McLaren vs. L. G. Fleischer, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 24th day of Febru ary, A. D. 1920.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk.
By M. C. VAN ALLEN,
Deputy Clerk, Los Angeles Office.

Service of the within by copy is hereby admitted this — day o April, 1916. DUKE STONE,
Attorney for Defendant and Respondent.

Received a copy of the within this 24th day of April, 1916, for th Judge of the Superior Court of Riverside County, State of California
A. B. PILCH,
Clerk of said Superior Court,
By O. A. LOWENTROUT,
Deputy.

48 In the Supreme Court of the State of California.

L. A. 4736.

ARCHIE J. MCLAREN, Administrator of the Estate of John McLaren, Deceased, Plaintiff and Appellant,

vs.

L. G. FLEISCHER, Defendant and Respondent.

Stipulation on Return to Writ of Certiorari.

Whereas, the Supreme Court of the United States did, on the 6th day of May, 1920, duly issue over the hand of the Clerk, and under the seal of said Court, a Writ of Certiorari in the above entitled action, and directed to the Honorable Judges of the Supreme Court of the State of California, and commending them to send without delay, to the said Supreme Court of the United States, the record and proceedings in said cause, and

Whereas, duly certified copies of the said record and proceedings have been heretofore filed in the office of the Clerk of said Supreme Court of the United States, and have been printed as certified, and the printed copies filed as required by the rules of said Court; and

Whereas, the written decision of the Supreme Court of California in said cause, has been printed and filed with the petition for said Writ in the office of the Clerk of said United States Supreme Court.

It is therefore stipulated, by and between, the Appellant and the Respondent herein, through their respective counsel, that the certified transcript of the record and proceedings, and the said decision as printed in said petition heretofore filed, and now on file in the office of the Clerk of the Supreme Court of the United States may
49 be taken and considered as the return to the said Writ of Certiorari, and that a copy of this stipulation, duly certified by the Clerk of the Supreme Court of California, may be transmitted and taken as the return of said Judges of the Supreme Court of California to said Writ.

Dated May 14, 1920.

HENRY M. WILLIS,
SAMUEL HERRICK, *of Counsel,*
Attorneys for Appellant.
DUKE STONE,
Attorney for Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify in obedience to the writ of certiorari hereto attached and returned herewith, the foregoing to be a true and correct copy of the stipulation of counsel filed in said cause on the 14th day of May, 1920, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 9th day of June, A. D. 1920.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk, San Francisco Office.

50 [Endorsed:] 831/27586. No. L. A. 4736. In the Supreme Court of the State of California. Archie J. McLaren, administrator of the estate of John McLaren, deceased, Appellant, vs. L. G. Fleischer, Respondent. Stipulation on return to writ of certiorari. Filed May 14, 1920. B. Grant Taylor, Clerk.

51 The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Being informed that there is now pending before you a suit in which Archie J. McLaren, Administrator of the Estate of John McLaren, deceased, is appellant, and L. G. Fleischer is respondent, L. A. No. 4736, which suit was removed into the said Supreme Court by virtue of an appeal from the Superior Court of Riverside County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the
52 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

53 [Endorsed:] L. A. 4736. Original. File No. 27,586. Supreme Court of the United States. No. 831, October Term, 1919. Archie J. McLaren, Administrator, etc., vs. L. G. Fleischer. Writ of Certiorari. Filed May 14, 1920. B. Grant Taylor, Clerk, by Wm. J. Traeger, Deputy.

54 [Endorsed:] File No. 27586. Supreme Court U. S. October Term, 1920. Term No. 831. Archie J. McLaren, adm'r, &c., petitioner, vs. L. G. Fleischer. Writ of certiorari and return. Filed June 15, 1920.